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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 SANDRA PATES and ALVIN  
13 PATES,

14 Plaintiffs,

15 vs.

16 QUALITY LOAN SERVICE  
17 COMPANY, et al.,

18 Defendants.

CASE NO. 10-CV-296 W (NLS)

ORDER DENYING  
PLAINTIFFS' EX PARTE  
MOTION FOR  
RECONSIDERATION  
(Doc. No. 30.)

19 On May 21, 2010, Plaintiffs Sandra and Alvin Pates' ("Plaintiffs") filed an ex  
20 parte motion requesting that this Court reconsider its previous decision to dismiss this  
21 lawsuit with prejudice. Defendants have opposed their request.

22 The Court decides the matter on the papers submitted and without oral  
23 argument. See S.D. Cal. Civ. R. 7.1(d.1) And for the reasons stated below, the Court  
24 **DENIES** Plaintiffs' motion. (Doc. No. 30.)  
25

26 **I. FACTUAL AND PROCEDURAL BACKGROUND**

27 Plaintiff Sandra Pates is the former title holder of a single property located at 613  
28 Marazon Lane, Vista, California 92081 (the "Property"). Plaintiff Alvin Pates is her

1 husband. Defendants are a collection of financial institutions that allegedly were  
2 involved with the mortgage and sale of the Property.

3 On February 13, 2009, Plaintiff Sandra Pates filed a lawsuit regarding the  
4 mortgage on the Property. On March 20, 2009, that lawsuit was removed to this Court.  
5 And on November 2, 2009, it was dismissed with prejudice and a judgment was entered  
6 in favor of Defendant EMC Mortgage Corporation. (See case no. 10-CV-296-W-POR,  
7 hereafter referred to as Pates I.)

8 On February 5, 2010, Plaintiffs filed the instant lawsuit. (Doc. No. 1.) On May  
9 12, 2010, this Court granted a motion to dismiss this case with prejudice. On May 21,  
10 2010, Plaintiffs filed an ex parte motion requesting that this Court reconsider that  
11 decision based upon a provision in the California Code of Civil Procedure. (Doc. No.  
12 30.) On May 25, 2010, Defendants filed an opposition. (Doc. No. 31.)

## 13 14 **II. LEGAL STANDARD**

15 Under Rule 60(b)(1) of the Federal Rules of Civil Procedure, a court can relieve  
16 a party from a final judgment, order, or proceeding because of mistake, inadvertence,  
17 surprise, or excusable neglect. As such, “Rule 60(b)(1) guides the balance between the  
18 overriding judicial goal of deciding cases correctly, on the basis of their legal and factual  
19 merits, with the interest of [the litigants] and the courts in the finality of judgments.”  
20 Harvest v. Castro, 531 F.3d 737, 747–748 (9th Cir. 2008); citing TCI Group Life Ins.  
21 Plan v. Knoebber, 244 F.3d 691, 695 (9th Cir. 2001).

22 Civil Rule 60(b)(6), the so-called catch-all provision, provides that on motion  
23 “the court may relieve a party or a party's legal representative from a final judgment,  
24 order, or proceeding for ... any other reason [in addition to those categories specified in  
25 (b)(1)-(5)] that justified relief.” Fed. R. Civ. P. 60(b)(6). In the context of default  
26 judgments, the Ninth Circuit has cautioned that 60(b)(6) is to be “used sparingly as an  
27 equitable remedy to prevent manifest injustice....” Harvest, 531 F.3d at 749 (quoting  
28 Latshaw v. Trainer Wortham & Co., Inc., 452 F.3d 1097, 1103 (9th Cir.2006))

1 The moving party bears the burden of demonstrating Rule 60(b)'s applicability.  
 2 TCI Group Life Ins. Plan v. Knoebber, 244 F.3d at 695. But the application of Rule  
 3 60(b) is committed to the discretion of the district courts. Id.

### 4 5 **III. DISCUSSION**

6 As an initial matter, Plaintiffs have moved for reconsideration under California  
 7 Code of Civil Procedure § 1008. In this case, however, federal procedural law controls.  
 8 See Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938); Hanna v. Plumer, 380 U.S. 460,  
 9 468, (1965). As such, the Court has construed Plaintiffs' request as a motion brought  
 10 pursuant to Federal Rule of Civil Procedure 60(b).

11 This Court granted Defendants' motion to dismiss for two reasons. Primarily, the  
 12 motion was granted because Plaintiffs failed to oppose it. Second, notwithstanding  
 13 Plaintiffs' failure to oppose, the Court found that the instant lawsuit was barred by the  
 14 doctrine of *res judicata*, due to the judgment entered in Pates I. (See Doc. No. 27 at 3.)

15 In their motion for reconsideration, Plaintiffs complain that they are *pro se* and  
 16 deserve leniency in regards to filing deadlines. They have also provided additional  
 17 factual and legal arguments which they contend justify the requested relief. Plaintiffs  
 18 have not, however, mentioned Pates I or the doctrine of *res judicata*.

19 As this Court previously explained, both Pates I and this lawsuit arise from the  
 20 same common nucleus of operative facts—the mortgage on the Property. (Doc. No. 27  
 21 at 3.) Plaintiffs have done nothing to upset that conclusion. Thus, even if the Court  
 22 was inclined to provide some leniency in regards to filing deadlines – which it is not –  
 23 this lawsuit would still be barred by the judgment in Pates I.<sup>1</sup> As such, the Court finds  
 24 that Plaintiffs have failed to demonstrate Rule 60(b)'s applicability and are not entitled  
 25 to the requested relief. TCI Group Life Ins. Plan v. Knoebber, 244 F.3d at 695.

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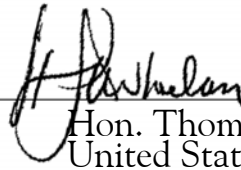
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 27 <sup>1</sup> Plaintiffs should also be reminded that this Court dismissed Pates I with  
 28 prejudice because Plaintiff Sandra Pates abandoned that lawsuit and failed to oppose a  
 motion to dismiss. (See Case No. 09-CV-571, Doc. No. 13.)

1 **IV. CONCLUSION**

2 In light of the foregoing, Plaintiffs' motion to reconsider is **DENIED**.

3  
4 **IT IS SO ORDERED.**

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6 DATED: May 28, 2010

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8   
9 Hon. Thomas J. Whelan  
United States District Judge